

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2853 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RADHAKISHAN NYALSINH

Versus

MANAGER

Appearance:

MR HK RATHOD for Petitioners
MR. B.V. BHATT for petitioner No. 4
MR DEEPAK V PATEL for Respondent No. 1
SERVED for Respondent No. 3

CORAM : R.K.ABICHANDANI, J

Date of decision: 26/08/96

ORAL JUDGEMENT

At the request of both the sides the petition is taken up for final disposal. The grievance of the petitioner is that the award made in reference Nos. 287 of 1986, 1 of 1987, 306 of 1986, 29 of 1987, 157 of 86 and 131 of 1989 by the labour court, Surat, on 30.6.1989 was illegal and should be set aside because the employees

had not received the amounts under the settlement pursuant to which the references were withdrawn.

It appears that in these references an application was made on 30.6.1989 by the representative of the petitioners employees one Mr. Jayeshbhai Barvalia stating that the matter was fully and finally settled by private negotiations between the parties and that the employees did not want to proceed with the matter and wanted to withdraw the same. An order was made on this application on the same day recording that the workmen were present with their representative Mr. Jayeshbhai Barvalia and the representative had stated that the matter was settled with the employer and a sum of Rs. 90,000/- was received towards all the dues by way of full and final settlement. The consent terms were produced and the order was made accordingly. It appears that thereafter on 19.7.1989 an application was made by the petitioners stating that they had not received the amount and therefore the withdrawal of the matter be cancelled and the matter should be proceeded with on merits. On 13.12.1989 the labour court rejected the said application after taking note of the fact that the said amount was already recovered pursuant to the recovery applications.

An affidavit of the petitioner No. 4 Mr. Bansilal Kansara sworn on 27.6.91 is placed on record in which it is stated that Mr. Jayeshbhai Barvalia had told the employees that the matter was finally settled and that an amount of Rs. 90,000/- was already paid by the employer. However, Mr. Jayeshbhai Barvalia did not pay the amount to the workmen. It is stated that the petition has been filed by the Union and he has been impleaded as co-petitioner though he had not instructed anyone to file the writ petition. It appears from the record that the employer had already paid the amount as per the settlement to the representative of these workmen. If the representative has not passed on the amount to the workmen he has violated the law and action can be taken against him both civil and criminal. However, that cannot be the ground for setting aside the impugned award because the settlement did take place and the employer has parted with the amount agreed to be paid for the workmen. All the workmen had remained present when the order was made by the labour court and therefore the impugned award cannot be faulted with. This petition is therefore rejected. Rule is discharged with no order as to costs.

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